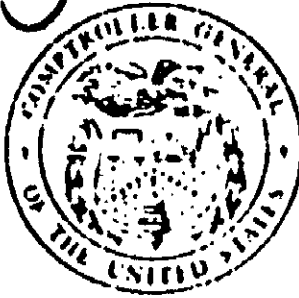


117455

**DECISION**



20742

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-205037

**DATE:** February 9, 1982

**MATTER OF:** Amray, . Inc.

**DIGEST:**

1. Rejection of bid as nonresponsive for failure of descriptive literature to identify the item to be furnished under the bid is proper where bidder's descriptive materials fail to identify which of six models in catalog it is offering.
2. Protester's allegation that awardee's bid is nonresponsive, not raised until several months after notification of award, in comments on agency's protest report, is untimely and not for consideration since it raises new and independent ground for protest which does not independently satisfy timeliness criteria of GAO's Bid Protest Procedures.
3. Awardee's bid, which contained several pages of typed invoices listing components and unit price, was improperly accepted because information was not sufficient as descriptive literature to show compliance with specifications. In addition, awardee took exception to Federal, State, and local taxation, which was to be included in bid price.

Amray, Inc. (Amray), has protested the award of a contract for a scanning electron microscope to Cambridge Instruments, Inc. (Cambridge), under invitation for bids (IFB) No. 188-S-ARS-81 issued by the Department of Agriculture, Agricultural Research Service (USDA). For the reasons set forth below, the protest is denied in part and dismissed in part.

The solicitation invited bids for a scanning electron microscope with accessories. Seven bids were received and opened on September 14, 1981. Although Amray's bid at \$245,568 was lower than the \$249,940 bid submitted by Cambridge, it was determined to be nonresponsive for failure to provide adequate descriptive literature as required by the solicitation. Award was made to Cambridge on September 25, 1981.

The IFB contained a Requirement for Descriptive Literature clause essentially identical to that which appears at Federal Procurement Regulations (FPR) § 1-2.202-5(d)(1) (1964 ed. amend. 10'. The clause required that literature furnished be identified to show the items in the bid to which it pertained and a clause in the requirements section of the IFB provided that failure to submit adequate descriptive literature with the bid would render the bid non-responsive. The contracting officer concluded that the catalog furnished by the protester was inadequate since it did not specify which of the six types of electron scanning microscopes listed therein would be furnished under the bid.

Amray disputes the contracting officer's determination that its bid failed to meet the descriptive literature requirements contending that it has previously responded to descriptive literature requests by furnishing agencies with brochures covering its "complete line" of electron microscopes, and that such practice has been accepted without objection. Additionally, in its letter of December 22, 1981, commenting on the agency report, Amray alleges that Cambridge's bid was nonresponsive since it altered the payment terms of the IFB.

We have held that the submission of descriptive data, where the data is used for bid evaluation, is a matter of responsiveness and where the data does not clearly show conformance with the specifications rejection of the bid is required. Fabcraft Inc., dba FABCO, B-186973, November 5, 1976, 76-2 CPD 384.

A review of Amray's bid shows that Amray merely inserted a total bid price in the bid schedule and attached its "complete line" catalog of six electron microscopes, consisting of its Federal Supply Schedule contract catalog/price list and literature from suppliers of software. While Amray argues that only one of the six models met all of the specifications, we believe this places too much of the burden on the contracting agency to go through the catalog and determine what item was intended to be offered by Amray. Moreover, there is no indication which of the six models Amray would deliver.

Amray's argument with respect to the responsiveness of Cambridge's bid is untimely. Where, as here, a protester initially files a timely protest and later supplements it with new and independent grounds, we have held that these later-raised bases must independently satisfy the timeliness criteria of our Bid Protest Procedures. Our Procedures require a protest of this type to be filed "not later than 10 days after the basis for protest is known or should have been known, whichever is earlier." See 4 C.F.R. § 21.2(b)(2) (1981); Annapolis Tennis Limited Partnership, B-189571, June 5, 1978, 78-1 CPD 412. Moreover, we have held that a protester which is challenging an award or proposed award on one ground shall diligently pursue information which may reveal additional grounds of protest. Tymshare, Inc., B-193703, September 4, 1979, 79-2 CPD 172.

The information necessary for Amray to make its allegation concerning Cambridge's responsiveness was available at the time of bid opening. Amray did not raise this argument until several months after the protester was notified of the award. On this basis, we believe that Amray failed to diligently pursue the information which would have revealed this additional ground of protest. Tymshare, supra. Accordingly, the protester's argument concerning the responsiveness of Cambridge's bid regarding payment terms was not presented in a timely manner and, therefore, is not for our consideration.

Nevertheless, our independent review of the record indicates that Cambridge did not submit any descriptive materials with its bid; instead, the awardee merely

supplied several pages of typewritten invoices listing the components to be furnished and corresponding unit prices. As noted above, our Office has held that the submission of descriptive data, where the data is used for bid evaluation, is a matter of responsiveness. Sprague and Henwood, Inc., B-201028, April 6, 1981, 81-1 CPD 260. Accordingly, the awardee's failure to provide the required literature should have resulted in rejection of its bid because it was insufficient to show compliance with the specifications. Atlantic X-Ray Service, Inc., B-187033, December 17, 1976, 76-2 CPD 504.

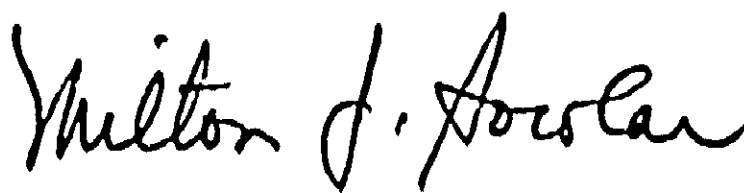
Moreover, we note that the IFB required that bidders include in the contract price "all applicable Federal, State, and local taxes and duties" and that Cambridge's bid took exception to this requirement by providing that:

"Prices quoted do not include State and/or Local Sales or Use Tax. The applicable amount will be added to invoices unless we are in receipt of your Exempt Certificate Number."

The failure of Cambridge to include all applicable taxes in its bid was a material deviation from the terms of the IFB. Allis-Chalmers Material Handling Sales and Service, B-183228, May 6, 1975, 75-1 CPD 280. Therefore, Cambridge's bid should have also been rejected as nonresponsive for failing to conform to this requirement of the IFB, FPR § 1-2.404-2(a) (1964 ed. amend. 121), and for imposing conditions which would modify material requirements of the IFB and limit the contractor's liability to the Government so as to give Cambridge an advantage over other bidders.

Although we conclude that the agency should have rejected the awardee's bid as nonresponsive, we are unable to recommend remedial action since the IFB requested delivery within 90 days after the contractor received notice of the award. Nonetheless, we are advising the agency of these procurement deficiencies in order to prevent a recurrence in the future.

The protest is dismissed in part and denied in part.

*for*   
Comptroller General  
of the United States